

Appeal Statement

The retrospective planning application to Staffordshire Moorlands District Council was made after the owner of 278 Bemersley Road had erected a new safety barrier along the perimeter of the flat roof that had been created when the existing garage on the eastern side of the property had been extended further forward than its original position in 2017.

The new safety barrier had been erected in 2023, which was 6 years after the garage had been extended further forward than its original position without the house-owners making any application for the development.

That the extension of the garage is now lawful is a matter of fact, because the building work had been completed more than 4 years prior to when the safety barrier on the edge of the flat roof was erected in 2023.

After the new safety barrier had been erected the owners of the neighbouring house at 276 Bemersley Road contacted the Local Planning Authority to complain about the erection of the new barrier around the edge of the flat roof of the garage, based on the fact that they claimed it reduced their view across the adjacent farmland on the eastern side of number 278.

This resulted in a site visit by an enforcement officer of the LPA who told the owner of 278 Bemersley Road that a retrospective planning application would need to be made in respect of the newly erected safety barrier that had enclosed the perimeter of the whole of the flat roof over the garage as it existed in 2023.

In response to this site visit and the instruction given by the enforcement officer a retrospective planning application was made by the owner of 278 Bemersley Road, who had chosen not to seek professional advice prior to submitting the application to Staffordshire Moorlands District Council.

The description of the proposal on the application form submitted to the District Council used these words: ***“New and additional balustrading to balcony over garage.”***

The application was refused by a decision notice dated 13th March 2024 with a single reason given for the refusal.

“1. The proposed balustrading would facilitate the use of an extended area of the garage roof as a raised terrace which would result in an unacceptable loss of amenity for a neighbouring property at No.276 Bemersley Road in terms of loss of privacy to the front garden area and principal windows, as well as the perception of overlooking and general disturbance from movement and people at an elevated level. The proposal therefore fails to comply with Paragraph 135 (f) of the NPPF and Staffordshire Moorlands Local Plan Policy DC1.”

Paragraph 135(f) of the NPPF is transcribed below:

135. Planning policies and decisions should ensure that developments:

(f) create places that are safe, inclusive and accessible and which promote health and well-being, with a high standard of amenity for existing and future users and where crime and disorder, and the fear of crime, do not undermine the quality of life or community cohesion and resilience.

The first part of that requirement is exactly why, what the applicant described as “balustrading” had been erected.

It had been erected as a safety barrier that made the use of all of the garage’s flat roof safe, inclusive and accessible to the house-owners as an outdoor south facing area, which had been used for that purpose at all times since the garage with its flat roof had been extended further south of the existing building in 2017.

It is considered that the means of enclosure fully complied with the requirement set out in paragraph 135 (f) of the NPPF, which is why the planning refusal notice is incorrect in saying that this was not the situation once the new means of enclosure had been erected as a safety barrier.

The latter part of the single reason for refusal refers to Staffordshire Moorlands Local Plan Policy DC1.

Policy DC 1

Design Considerations

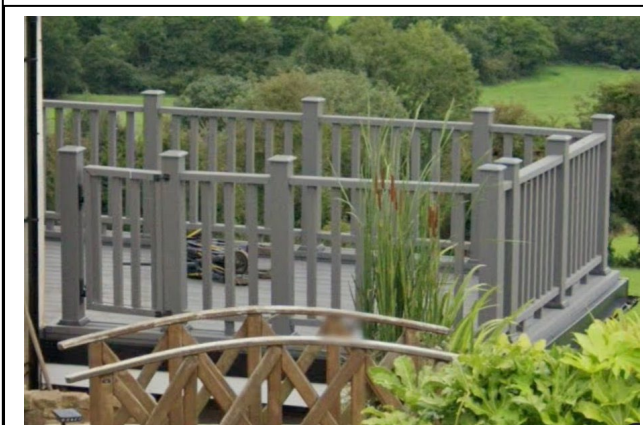
All development shall be well designed and reinforce local distinctiveness by positively contributing to and complementing the special character and heritage of the area in line with the Council's Design Guide SPD.

In particular, new development should:

- 1. be of a high quality and add value to the local area, incorporating creativity, detailing and materials appropriate to the character of the area;*
- 2. be designed to respect the site and its surroundings and promote a positive sense of place and identity through its scale, height, density, layout, siting, landscaping, character and appearance;*
- 3. create, where appropriate, attractive, active, functional, accessible and safe public and private environments which incorporate public spaces, green infrastructure including making provision for networks of multi-functional new and existing green space (both public and private), landscaping, public art, 'designing out crime' initiatives and the principles of Active Design;*
- 4. incorporate sustainable construction techniques and design concepts for buildings and their layouts to reduce the impact of the development;*
- 5. protect the amenity of the area, including creation of healthy active environments and residential amenity, in terms of satisfactory daylight, visual impact, sunlight, outlook, privacy, soft landscaping as well as noise, odour and light pollution;*
- 6. promote the maintenance, enhancement, restoration and re-creation of biodiversity and geological heritage, where appropriate;*
- 7. provide for safe and satisfactory access and make a contribution to meeting the parking requirement arising from necessary car use;*
- 8. require new developments to be well integrated for car, pedestrian and cycle use as well as other sustainable transport links;*
- 9. ensure that existing drainage, waste water and sewerage infrastructure capacity is available, and where necessary enhanced, to enable the development to proceed;*

The nine paragraphs in the policy relate to a general requirement for good quality development that takes account of local distinctiveness, although the high quality of the means of enclosure, erected as a safety barrier around the perimeter of the garage's flat roof, can be seen in the photos shown below.

The first was taken from the road to the west of the property, which took in the view across the garden of the neighbouring property, the loss of amenity to which was considered to be the primary reason for refusing the home-owner's planning application. The second photo is the enlarged section identifying the extended flat roof over the garage that had been in residential use since 2017, which was when the whole area of the flat roof above the garage started being used as an outdoor seating space by the house-owner.



The residential use being made of the extended area of the garage roof can be seen in the photo below, when the original safety barrier that had identified the extent of the original area of the flat garage roof used for residential purposes comprised low steel fencing that had been erected years earlier by a previous house-owner.

That identified the extent of the garage roof when the owners completed the purchase of the property in 2014.

After the extension of the garage in 2017 the photo shows that two chairs and a low table had been placed on the extended part of the garage's flat roof, which was accessed from the front of the house using a short plank of wood positioned on a smaller piece of wood sitting on the existing ground level in front of the house.



That identified the very slight height difference between actual ground level in front of the house and the level of the flat roof over the basement garage.

In effect there had been use of the extended flat roof as an outdoor sitting area for a period in excess of 6 years when the new means of enclosure was erected around the perimeter of the roof in 2023 as a safety barrier.

At which time the tall garden hedge located entirely within the boundary of 278 Bemersley Road provided a good degree of privacy to the owners of 276 when they made use of the patio area directly in front of their house, even if such use coincided with the occasional use made of the extended area of the flat roof over the garage by the owners of 278 since 2017.

It was after the new safety barrier had been erected that the owners of 276 Bemersley Road contacted the local planning authority to complain about the erection of it, although the use of the flat roof as an outdoor seating area by the owners of 276 had been known to them after the garage extension had been completed in 2017.

Between 2017 and 2023 there had been a number of occasions when the two neighbouring families had met on the extended part of the garage roof, which is why the reason given for refusal of planning permission for the newly erected means of enclosure does not seem to have dealt with the sole purpose of the application, which sought to gain planning permission for the newly erected security barrier, not the continued use of the garage's extended flat roof for residential purposes.

The highlighted sections of the Officer's report copied below makes that quite clear:

The site is bounded by 276 Bemersley Road to the west, and agricultural land to the east. To the north (rear) of the property is 280 Bemersley Road. The proposal has no impact on 280 Bemersley Road due to the siting of the garage relative to this property.

The proposal will have a severe and unacceptable amenity impact on 276 Bemersley Road by way of overlooking and loss of privacy. The proposal forms an extension to a balcony, which now projects beyond the principal elevation, and has the potential to overlook into the garden and glass conservatory of 276 Bemersley Road.

The proposal also has the potential for noise pollution disturbance for 276 Bemersley Road as the new projection of balcony has a seating area, and is just 8 metres from the party wall, and 9 metres from the conservatory.

It is considered that as a seating area, the proposal would have a greater impact in terms of noise than the existing garden, given its elevated position. The occupants of the neighbouring property would also experience an enhanced perception of overlooking due to the awareness of voices and movement at an elevated level which would feel overbearing and unneighbourly when experienced from their property.

Whilst it is acknowledged that there was previously a balcony area on top of the existing garage, the proposal extends this area and as a result there would be a direct line of sight from the balcony into the neighbouring property which was not the case previously.

The proposal would therefore be detrimental to the living conditions of neighbours contrary to Policy DC1 and design advice in the NPPF.

The report refers to the continued use of the extended flat roof as though that was the reason for the planning application, although the use of the extended part of the flat roof above the garage did not require planning permission, because such use was residential use by the house occupiers.

That this was a lawful use of the flat garage roof is confirmed by Section 55 (2) (d) Town and Country Planning Act 1990.

55 *Meaning of “development” and “new development”.*

(2) *The following operations or uses of land shall not be taken for the purposes of this Act to involve development of the land—*

d) The use of any buildings or other land within the curtilage of a dwellinghouse for any purpose incidental to the enjoyment of the dwellinghouse as such;

What had not been referred to in the Officer’s Report was why the erection of the safety barrier itself did not comply with policies in the adopted local plan.

The factual difference in the height of the flat garage roof compared to existing ground level was also not mentioned in the Officer’s report, which is why the use of the phrases **“raised terrace”** **“perception of overlooking”** and **“elevated level”** seemed to show a bias in favour of the neighbour’s who had complained about the erection of the new safety barrier in 2023, even though they had personal knowledge that the roof of the garage had been extended in 2017 with the whole of that additional area being used for residential purposes by the owners of number 278 since that time.

What would have been obvious to the planning officer during a site visit was that the flat roof of the garage is only slightly higher than the ground alongside each of the houses due to the change in ground levels when the garage was erected far lower than natural ground level to create a basement type of area for the parking of vehicles.

It would have been noticeable that access to the whole of the newly enclosed flat roof of the garage can now be taken by stepping out of the patio doors situated on the east wall of the house. That reflects with the use of a standard patio area located to the rear of many houses, which is normally accessed from a door in the external wall of a house that is immediately adjacent to such a patio,

To further analyse the reason for refusal, one would need to understand the current legal situation regarding the roof of the garage, which appears to have been used as an outdoor roof terrace since the garage was erected at a much lower level than the house alongside it.

It is a matter of fact that the roof over the original basement garage had been put to residential use as an outdoor roof terrace at all times since occupation of the house began by the current owners in 2014.

That was a residential use of the flat roof above the underground garage building.

The patio door in the east wall of the house had at all times provided access to the flat roof above the garage, which allowed residential use of the flat roof.

When the garage was extended in 2017 the garage roof remained within the curtilage of 278 Bemersley Road, all of which curtilage was in residential use under Class C3 (a) of the Use Classes Order 1987.

It was confirmed in the Officer's report that the extension of the garage in 2017, which was a breach of planning control, had become lawful after 4 years, confirming that this was an accepted matter of planning law when he came to consider the planning application.

DESCRIPTION OF SITE

*The site is a semi-detached white rendered house with a dual pitched tile roof. The site is attached to 276 Bemersley Road to the west, and is bounded by agricultural land to the east. To the north (rear) of the property is 280 Bemersley Road. The eastern portion of the site is an attached garage with a flat roof, upon which is balustrading to form a balcony platform. The garage was extended beyond the principal elevation (without planning permission) in 2017. **As these works took place more than 4 years ago they are now lawful. More recently the balustrading has been extended to cover this addition, which this application is for.** The site is in the open countryside and in the Green Belt.*

PROPOSAL

The proposal is for retrospective permission for balcony balustrading upon an attached flat roofed garage. The existing black metal balustrading has been replaced and extended with grey plastic/ clad timber.

On the planning application form the owner of 278 Bemersley Road had described the development as ***"New and additional balustrading to balcony over garage"***

It would have been more appropriate to describe the development using the following words:

"The erection of a safety barrier along the perimeter of the flat roof over the existing garage on the east side of the dwelling"

The Planning Officer used the words *"balcony balustrading"* to confirm what was considered to be the reason for the planning application, although the new means of enclosure, erected as a safety barrier around the perimeter of the flat roof over the garage, appears to have been granted planning permission by Schedule 2, Part 2, Class A of the Town and Country Planning (General Permitted Development) (England) Order 2015.

"Minor operations

Permitted development

A. *The erection, construction, maintenance, improvement or alteration of a gate, fence, wall or other means of enclosure.*

The final words used in Class A of the GPDO relate to other means of enclosure, which would define the safety barrier erected in 2023 around the perimeter of the flat roof over the garage.

In any other position around the boundary of the residential property that newly constructed safety barrier would be referred to as a fence, although the planning officer's report continued to refer to it as *"balcony balustrading"*, even though there was no balcony as such.

It is a matter of fact that the area being enclosed was the total area of the flat roof over the basement garage, which had constantly been used as a roof terrace by the current house owners after the extension of the garage had been completed in 2017. It was the safety barrier erected in 2023, which was the operational development for which the planning application had been made.

As such the Refusal Notice regarding planning application SMD/2023/0511 should be set aside and the appeal should be granted based on the physical development described in the planning application made on 11th October 2023, or alternatively based on the legal interpretation of Schedule 2, Part 2, Class A of the Town and Country Planning (General Permitted Development) (England) Order 2015.